



TTAB

THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PO-BOYZ, LTD.,

Concurrent Use Applicant,

v.

ANTONE'S IMPORT COMPANY

Registrant.

10-15-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #74

Concurrent Use No. 1,236

**REGISTRANT'S MOTION FOR SUSPENSION
AND
REQUEST TO SERVE WRITTEN DISCOVERY**

COMES NOW the Registrant, Antone's Import Company ("AIC"), by and through counsel, and moves the Trademark Trial and Appeal Board ("Board") for an Order suspending this proceeding and authorizing the service of the attached written discovery on Concurrent Use Applicant, Po-Boyz, Ltd. ("Po-Boyz").

In support of this Motion, Registrant states as follows.

Registrant believes that although it is in a position to provide a response to the Order to Show Cause, in order to fully respond to the Order, Registrant needs to undertake some very limited, narrowly-tailored discovery of Concurrent Use Applicant.

This paper is not intended to substantively respond to the Order to Show Cause. If the Board declines to allow service of Registrant's written discovery, Registrant respectfully requests that it be given thirty-five (35) days from the date of the Board's Order within which to substantively respond to the Order to Show Cause.

TRADEMARK TRIAL AND
APPEAL BOARD
OCT 15 2002 PM 9:30

SS

Summary Position of Registrant

The following is intended to be a very brief (and certainly not exhaustive) description of some of Registrant's arguments to be filed in responding to the Order to Show Cause.

The Trademark Trial and Appeal Board ("Board") issued the Order to Show Cause based on a December 4, 1996 Order issued from a bankruptcy court, pursuant to which Po-Boyz asserts that it was assigned the ANTONES trademark and related registrations (the "ANTONE'S Marks"). That Order is entitled "Order Substantively Consolidating Bankruptcy Cases; Approving Assumption and Assignment of Executory Contracts; Approving the Sale of Assets Free and Clear of Liens and Encumbrances; Approving Resolution of Claims With Mary Jo Antone Hatfield; and Confirming Amended Joint Plan of Reorganization of J.J. Gregory Gourmet Services, Inc. and M.J. Antone, Inc., As Modified" and dated December 4, 1996" ("Bankruptcy Court Order").¹ In that proceeding, Registrant was a creditor.

Registrant is prepared to demonstrate that the Bankruptcy Court Order did not address the issue of "ownership" of the ANTONE'S Mark and did not assign the subject trademark, but rather whether the debtor's rights **as licensee** under the subject ANTONE'S Marks could be assigned to a third party, despite clear provisions in the License Agreement which would forbid such assignment.

Moreover, Registrant notes that while the issue of ownership of the ANTONE'S Mark was not addressed in the Bankruptcy Court Order, this precise issue actually was directly addressed by both parties (and/or their predecessors) in a prior State court lawsuit. Specifically, in 1992, AIC filed a lawsuit for damages and injunctive relief against J.J. Gregory Gourmet Services, Inc.

¹ This Order is not a "court decree" contemplated by Trademark Rule 2.99(f). *See also* TBMP §1102.02(b).

("Gregory"), the alleged predecessor in interest to Po-Boyz, Ltd., in the District Court of Harris County, Texas, 334th Judicial District. AIC claimed ownership of the ANTONE'S Marks, and that pursuant to a 1978 License Agreement, it licensed the ANTONE'S Marks to Gregory for certain limited purposes. AIC alleged that Gregory breached the License Agreement in a variety of ways. Gregory filed an Answer and Counterclaim on October 18, 1993.² Gregory's counterclaim was in the nature of a request for a declaratory judgment based in part upon the claim that the 1978 License Agreement was ambiguous as to a number of provisions, including ownership. Specifically, Gregory's Second Counterclaim plead:

AIC further contends that it continues to own the Antone's marks and systems. The intent of the parties to the Agreement was to convey ownership of the marks and systems to J.J. Gregory. To the extent the Agreement does not clearly operate as a conveyance, the Agreement is ambiguous. Accordingly, J.J. Gregory should be recognized as the true and lawful owner of the Antone's marks and systems.

See Exhibit 1, p. 4.

The matter was referred to arbitration. On December 24, 1993, an Award of Arbitrators issued from the assigned arbitrators of the American Arbitration Association. In essence, the Arbitrators found that the disputed trademarks were owned by AIC and that Gregory only held a license to utilize the trademarks. *See* Award of Arbitrators, attached hereto as Exhibit 2 (emphasis supplied). The arbitration award also included a provision for Gregory to "immediately cease and desist and is hereby permanently enjoined from selling" in contravention of the 1978 License Agreement.

² *See* Defendant's Answer, Counterclaim and Amended Demand for Arbitration, attached hereto as Exhibit 1.

Upon AIC's Motion, the State Court issued a Final Judgment adopting the Award of Arbitration on March 19, 1994. *See* Final Judgment, attached hereto as Exhibit 3. The first two enumerated paragraphs are particularly relevant to this proceeding:

1. *The trademarks "Antone's", "Antone's Import Company", "Antone's Foreign Foods", and all related logos designs and artwork associated therewith are owned by Antone's Import Company.*

2. *J.J. Gregory Gourmet Services, Inc. holds a valid, binding and enforceable license to utilize the trademarks "Antone's", "Antone's Import Company", "Antone's Foreign Foods", and all variations thereof, together with all logos, designs and artwork associated therewith (hereinafter collectively referred to as "the trademarks"), with the following restrictions: . . .*

Id., p. 1 (emphasis supplied).

As noted, the State Court found, *inter alia*, that AIC was the owner of the marks and Po-Boyz was a mere licensee.

Furthermore, even assuming that the Bankruptcy Court Order addressed ownership issues – which it did not – giving the Order any preclusive effect in this proceeding is unwarranted in light of a number of facts, including that Registrant was not a full party to the proceeding, the issue was unnecessary to the decision, was not fully and fairly litigated, the terms of the Order are (at a minimum) ambiguous, and that it would result in gross inequities.

As noted above, the above recitation is not intended to be Registrant's comprehensive response; it intends to advance other arguments as well. However, Registrant seeks to provide the Board with a good-faith showing supporting its Request for limited discovery. Registrant respectfully submits that the foregoing meets the minimum showing necessary to support the requested discovery.

Registrant Requires Additional Information and Documents

While Concurrent Use Applicant's September 9, 1998, Response filed in its concurrent use application No. 75/338,455 ("Response") referenced a "settlement," it chose not to attach to its Response documents *sufficient* to evidence same. For example, the only document offered to the Examining Attorney relating to the "settlement" is entitled "Election of Antone's Import Company, Inc." However, this document only states that AIC agreed to dismiss its appeal. Facially, the terms of this "Election" do not address the issue of ownership of the ANTONE'S Marks. Moreover, the "Election" itself references an agreement which was not attached to the Response.

Concurrent Use Applicant contends that the Bankruptcy Court Order effected an assignment of the underlying ANTONE'S Marks. However, there were no documents attached to its Response which would support this interpretation of the Bankruptcy Court Order. Indeed, the documents which were submitted in support of its position indicate the opposite. To the extent that Concurrent Use Applicant possesses documents which support its contention, it should disclose them to Registrant.

In light of the above, Registrant requests the limited written discovery attached hereto as Exhibits 4 and 5.³

The equities favor granting Registrant's request. First, the "court decree" here involved is not that type of order envisioned by the Trademark Rules, where the issue of ownership is fully and fairly litigated. Second, the proposed written discovery is narrowly-tailored to achieve

³ Registrant notes that discovery depositions may become necessary, but in order to keep the requested discovery limited, no such request is now made. Registrant may need to address this issue after it reviews concurrent use Applicant's responses.

the limited goals described above. Third, the prejudice faced by Registrant – loss of its incontestable registration rights for the whole of the United States except three limited areas – is severe. For these reasons, and those stated above, Registrant respectfully requests that the Board grant its dual requests that the attached discovery be served and that the proceeding be suspended pending the disclosure of information and production of documents by Concurrent Use Applicant.

As to the timing for the lifting of suspension, Registrant proposes that it be required to certify to the Board the date it takes possession of the whole of Concurrent Use Applicant's responsive document production. Registrant further suggests that it have thirty (30) days from such receipt to file its Response to the Order to Show Cause.

Finally, as noted above, should the Board not grant the relief requested herein, Registrant respectfully requests that it be given thirty-five (35) days from the date of the Board's Order addressing such request to respond to the Order to Show Cause.

Respectfully submitted,

ANTONE'S IMPORT COMPANY

By: 

Harvey B. Jacobson, Jr.
Matthew J. Cuccias
JACOBSON HOLMAN PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004
(202) 638-6666
Attorneys for Registrant


October 15, 2002

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a true and correct copy of the foregoing REGISTRANT'S MOTION FOR SUSPENSION AND REQUEST TO SERVE WRITTEN DISCOVERY, in connection with Concurrent Use No. 1,236, to be served by first-class mail, postage prepaid, upon counsel for Concurrent Use Applicant:

Stephen L. Sapp
Locke Liddel & Sapp LLP
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776

this 15th day of October, 2002

_____

NO. 92-053843

10-15-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #74

998

ANTONE'S IMPORT COMPANY

Plaintiff,

VS.

J. J. GREGORY GOURMET
SERVICES, INC.

Defendant.

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

334TH JUDICIAL DISTRICT

DEFENDANT'S ANSWER, COUNTERCLAIM AND
AMENDED DEMAND FOR ARBITRATION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, J.J. Gregory Gourmet Services, Inc. ("J.J. Gregory"), Defendant, and files this Answer, Counterclaim and Amended Demand for Arbitration, and in support thereof would respectfully show the following:

I.

FACTS

On November 30, 1992, J.J. Gregory was served with Plaintiff Antone's Import Company ("AIC") Original Petition and Application for Temporary Restraining Order and Permanent Injunctive Relief and Damages in the above numbered and styled cause. All of AIC's claims in this lawsuit arise under the terms of a written agreement between AIC and J.J. Gregory dated August 28, 1978 (the "Agreement"). (Attached as Exhibit "A").

J.J. Gregory, as provided in the Agreement, has exercised its right to develop and utilize the delicatessen systems and trademarks under the tradename "Antone's" by opening

93 OCT 15 11 06 AM '93

J. Dain
lac

"Antone's" stores, franchising the right to open "Antone's" stores, and licensing third-parties to use the Antone's marks and systems. These operations by J.J. Gregory presently include the operation of four Antone's stores, one franchise, and the licensing of a company known as M.J. Antone, Inc. to operate two "Antone's" stores and to make direct sandwich sales to Rice Epicurean and Randall's Food Markets.

II.

GENERAL DENIAL

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant denies each and every, all and singular, the allegations contained in Plaintiff's Original Petition, and demands strict proof thereof as is required by the laws of the State of Texas.

III.

AFFIRMATIVE DEFENSE

By way of further answer, if any need there be, J.J. Gregory hereby pleads the doctrines of *collateral estoppel* and *res judicata* as affirmative defenses. On December 11, 1989, in Cause No. 88-47205 in the 234th Judicial District Court of Harris County, Texas, the Court rendered a Final Judgment providing, among other things, that no conduct of J.J. Gregory prior to the date thereof had breached the Agreement. Most, if not all of the conduct complained of by AIC in this case involves matters and conditions existing prior to December 11, 1989, when the Final Judgment was rendered in Cause No. 88-47205. Accordingly, AIC's claims should be denied to the extent AIC is complaining of conduct of J.J. Gregory for conditions otherwise existing prior to December 11, 1989.

IV.

COUNTERCLAIM

ENTERED	<u>12/1/78</u>
VERIFIED	_____

J.J. Gregory Gourmet Services, Inc., Counter-Plaintiff, brings this counterclaim against Antone's Import Company, Counter-Defendant, showing the following:

1. Pursuant to Section 37.004 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, Counter-Plaintiff requests a declaratory judgment that:

a) J.J. Gregory's conduct and operations up to the date of judgment are in conformity with the terms of the written agreement of August 28, 1978;

b) the Agreement of 1978 is clear in its terms and permits all of the uses of the Antone's marks and systems heretofore employed by J.J. Gregory conduct and operations entered into by J.J. Gregory up to the date of judgment;

c) that Antone's Import Company is bound by the terms of the Agreement as written, and such writing clearly limits AIC to the operation of its three stores and warehouse as originally set forth in the Agreement.

2. In the alternative, pursuant to § 37.001 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, Counter-Plaintiff requests a declaratory judgment that the Agreement of 1978 uses vague terms rendering certain sections of the Agreement ambiguous, and the parties are bound by their intent relative to those sections as follows:

a) Paragraph 1 of the Agreement states:

Grant to Purchase. The Seller licenses and grants the Purchaser the right to own, operate or franchise the ownership and operation of business similar to the Business and, in connection therewith, to license or sub-license the use of the Marks.

Paragraph 1 of the Agreement further provides:

Seller agrees that such license and rights shall belong exclusively to the purchaser. . . .

AIC suggests that the clause "business similar to the Business" limits the conduct and operations of J.J. Gregory to opening import food stores substantially identical to the 807 Taft location operated by AIC. This clause and the use of the term "Business" is ambiguous and the intent of the parties to the Agreement does not support such a construction. Therefore, J.J. Gregory is entitled to make any use of the marks and systems that J.J. Gregory deems appropriate; including the opening of smaller stores, sandwich shops, and the licensing of third-parties to sell products utilizing the marks and systems.

AIC further contends that it continues to own the Antone's marks and systems. The intent of the parties to the Agreement was to convey ownership of the marks and systems to J.J. Gregory. To the extent the Agreement does not clearly operate as a conveyance, the Agreement is ambiguous. Accordingly, J.J. Gregory should be recognized as the true and lawful owner of the Antone's marks and systems.

b) The last two sentences of Paragraph 1 state:

The Seller maintains the right to own and operate franchises within a two and one-half mile radius of the locations listed on Annex B. The Seller agrees not to own or operate any franchises out of a two and one-half mile radius of such locations.

The term "franchise" as used in these sentences is vague and ambiguous. AIC maintains the right to own and operate stores, as listed on Annex A to the Agreement. The Agreement is ambiguous about the rights to "franchise" multiple

stores within in the two and one-half mile radius of the locations listed on Annex A. The intent of the parties was for AIC to retain operations at its three original locations, and be limited to such three stores. Therefore, AIC is not entitled to open stores or other operations than the three original locations.

c) Paragraph 2(c) of the Agreement states:

The Purchaser shall have the right to act as a wholesaler outside the city limits of Houston, Texas, and, in such capacity, to resell any products purchased from the Seller or any supplier of the Seller to any of its franchisees.

Despite no such clear limitation within this paragraph, J.J. Gregory agrees that the intent of the parties was to preclude J.J. Gregory from competing with the AIC warehouse by selling supplies to other restaurants within the city limits of Houston. AIC apparently contends that this provision of the Agreement merits an interpretation broadly limiting sandwich sales at reduced prices, such as the sales by M.J. Antone, Inc. to Rice Epicurean and Randall's Food Markets. The term "wholesaler" is ambiguous as constituting, or not constituting, a limitation upon J.J. Gregory. J.J. Gregory should be allowed to sell, or license the sale of po-boy sandwiches both within and outside the city limits of Houston.

d) Paragraph 3 of the Agreement states:

Manner of Conducting operations. The Purchaser agrees to conduct its operations and to grant franchises only to franchisees that agree to conduct their operations in conformity with the quality of the Seller's business as now constituted. The Purchaser agrees that the decor of such franchises shall be consistent with the Business as now constituted subject to such modification as the Purchaser shall reasonably determine is necessary in light of the location of the intended operation, desired marketing features and other economic and aesthetic considerations.

AIC apparently contends this paragraph constitutes a limitation upon the conduct and operations of J.J. Gregory to marketing Antone's products in outlets substantially identical to the 807 Taft location operated by AIC. To the extent paragraph 3 of the Agreement could be construed to support such a limitation on J.J. Gregory's use of the marks and systems, such terms are ambiguous. The intent of the parties to the Agreement does not to support such a limitation or construction. The parties intended that this paragraph simply require that J.J. Gregory's operations be of a standard or grade comparable to AIC at the time the Agreement was executed. Therefore, J.J. Gregory is entitled to expand the Antone's systems and licenses in any manner deemed appropriate by J.J. Gregory under currently existing market conditions.

e) Paragraph 5 of the Agreement is titled "Franchise and Royalty Fees." This paragraph uses the term "franchise" and "license rights" as to the "Purchaser's authority under this Agreement." AIC has suggested that this paragraph supports an expanded responsibility to pay royalties based on J.J. Gregory's sales. The term "franchise" is ambiguous as it is used as a basis for this assertion. The intent of the parties to the Agreement was to limit J.J. Gregory's responsibility to pay royalty fees to royalties collected from its registered franchisees, as that term is commonly understood. J.J. Gregory has not breached any aspect of the royalty obligation as intended by the Parties.

¶ The foregoing specific ambiguities should be construed in a manner consistent with the intent of the parties and the totality of the Agreement as written. Therefore, a

declaratory judgment that the operations and conduct of J.J. Gregory up to the date of hearing are consistent with the Agreement as properly interpreted is mandated.

Pursuant to Section 38.001 and Section 37.009 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, Counter-Plaintiff requests the award of reasonable attorneys' fees incurred as a result of this litigation. The basis of this litigation is the Agreement. Counter-Plaintiff is represented by counsel in this matter.

V.

AMENDED DEMAND FOR ARBITRATION

J.J. Gregory invoked the arbitration clause in the Agreement between the parties by motion on December 3, 1992. This cause of action is now pending before arbitrators of the American Arbitration Association on November 8, 1993. J.J. Gregory hereby requests, as Claimant in the arbitration, that the arbitrators address J.J. Gregory's counterclaims for a declaratory judgment based on the clear terms of the contract, or, alternatively, the intent behind the totality of the Agreement. These issues are necessary to a full and final resolution to the matters made the basis of this litigation.

WHEREFORE, PREMISES CONSIDERED, J.J. Gregory, Defendant and Counter-Plaintiff herein respectfully requests:

1. a judgment be entered against Antone's Import Company on all its claims against J.J. Gregory for breach and default of the Agreement;
2. a declaratory judgment be entered for J.J. Gregory stating that its conduct and operations up to such date are in conformity with the terms of the Agreement as written;
3. Alternatively, a declaratory judgment for J.J. Gregory stating that its conduct and operations up to such date are in conformance with the intent of the parties which controls the ambiguous terms of the Agreement;

4. reasonable attorneys' fees for the arbitration and/or trial of this cause, plus all appeals, if any;
5. costs of suit;
6. such other and further relief, both general and special, legal or equitable, to which J.J. Gregory may show itself to be entitled.

Respectfully submitted,

LOOPER, REED, MARK & McGRAW
INCORPORATED

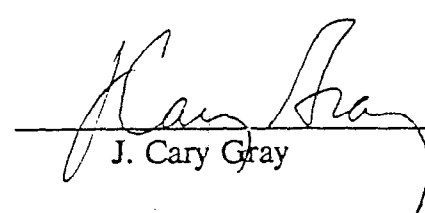
By: 

J. Cary Gray
Texas Bar No. 08322300
Nine Greenway Plaza, Suite 1717
Houston, Texas 77046
(713) 877-6355
(713) 877-7856 - Telefax

ATTORNEY FOR DEFENDANT J.J.
GREGORY GOURMET SERVICES, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Plaintiff's Motion to Compel was served upon Mr. Gerald DeNisco, DeNisco & Associates, 1800 Bering, Suite 900, Houston, Texas 77057, and Ms. Tamme S. Wilkes, Senior Administrator, American Arbitration Association, 1005 First City Tower, 1001 Fannin Street, Houston, Texas 77002-6708, by hand delivery on this the 18th day of October, 1993.


J. Cary Gray

American Arbitration Association

COMMERCIAL ARBITRATION TRIBUNAL



In the Matter of the Arbitration between:

J.J. Gregory Gourmet Services, Inc.

-and-

Antone's Import Company

CASE NUMBER: B 70 181 0121 92 W

AWARD OF ARBITRATORS

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the Arbitration Agreement entered into by the above-named parties, and dated August 28, 1978 and having been duly sworn and having duly heard the proofs and allegations of the parties, FIND and AWARD, as follows:

1. The trademarks "Antone's", "Antone's Import Company", "Antone's Foreign Foods", and all related logos designs and artwork associated therewith are owned by Antone's Import Company.

2. J.J. Gregory Gourmet Services, Inc. holds a valid, binding and enforceable license to utilize the trademarks "Antone's", "Antone's Import Company", "Antone's Foreign Foods" and all variations thereof, together with all logos, designs and artwork associated therewith (hereinafter collectively referred to as "the trademarks"), with the following restrictions:

A. J.J. Gregory Gourmet Services, Inc. is not authorized under its license to operate, sub-license or franchise any business establishment or operation which uses or publicly displays the Trademarks, or sells products bearing the Trademarks, within a two and one-half (2-1/2) mile radius of each of the following addresses: 807 Taft Street, Houston, Texas; 8111 Main Street, Houston, Texas; and, 1639 South Voss Road, Houston, Texas.

B. J.J. Gregory Gourmet Services, Inc. is not authorized under its license to authorize the sale of any product, including Po-Boy sandwiches, by any third party acting for itself or as agent for J.J. Gregory Gourmet Services, Inc. within a two and one-half (2-1/2) mile radius of each of the following addresses: 807 Taft Street, Houston, Texas; 8111 Main Street, Houston, Texas; and, 1639 South Voss Road, Houston, Texas.

C. J. J. Gregory Gourmet Services, Inc. is not authorized under its license to sell, or to authorize any third-party acting on its own behalf or as agent for J. J. Gregory Gourmet Services, Inc. to sell, products, including Po-Boy sandwiches, to any third-party who J. J. Gregory Gourmet Services, Inc. believes or has reason to believe sells or intends to sell such products, including Po-Boy sandwiches, within a two and one-half (2-1/2) mile radius of each of the following addresses: 807 Taft Street, Houston, Texas; 8111 Main Street, Houston, Texas; and, 1639 South Voss Road, Houston, Texas.

D. J. J. Gregory Gourmet Services, Inc. is not authorized under its license to sell bulk food items to restaurants, grocery stores or other business or commercial purchasers within the city limits of Houston, Texas. The term "bulk food items" as used herein does not include prepared, ready-to-eat Po-Boy sandwiches.

3. J. J. Gregory Gourmet Services, Inc. is hereby Ordered to immediately cease and desist and is hereby permanently enjoined from selling, and from permitting the sale by others (whether under license, re-sale, consignment or other arrangement), of any products bearing the Trademarks at any location within a two and one-half (2-1/2) mile radius of each of the following addresses: 807 Taft Street, Houston, Texas; 8111 Main Street, Houston, Texas; and, 1639 South Voss Road, Houston, Texas; provided, however, that such injunction shall not apply with respect to the continued operation of retail establishments by JJ Gregory Gourmet Services, Inc., at 810 Capitol, Houston, Texas, 5350 Westheimer, Houston, Texas, and in Galleria II, Houston, Texas.

4. J. J. Gregory Gourmet Services, Inc. is ordered to refrain from advertising special sales, pricing or promotions in any manner which does not prominently specify that such offers do not apply at all "Antone's" locations.

5. Antone's Import Company shall take nothing by reason of its claims against J. J. Gregory Gourmet Services, Inc. for breach of the Agreement as same relate to quality standards.

Accordingly, the compensation of the arbitrators totaling NINETEEN THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$19,500.00) and the administrative fees and expenses of the American Arbitration Association totaling FIVE THOUSAND FIVE HUNDRED AND FIFTY DOLLARS AND SIXTY-SIX CENTS (\$5,550.66) shall be borne equally by the parties.

6. Antone's Import Company shall take nothing by reason of its claims against J. J. Gregory Gourmet Services, Inc. as same relate to the operation of "Antone's Express" drive through locations.
7. Antone's Import Company is estopped or precluded from bringing its complaints against J. J. Gregory Gourmet Services, Inc. with respect to the operation of retail establishments by J. J. Gregory Gourmet Services, Inc. at 810 Capitol, Houston, Texas, 5350 Westheimer, Houston, Texas and in Galleria II, Houston, Texas, and therefore shall take nothing by reason of these claims.
8. Antone's Import Company has the exclusive right to distribute bulk food items to restaurants, grocery stores or other business or commercial purchasers bearing the Trademarks within the city limits of Houston, Texas. As used herein, the term "bulk food items" does not include prepared, ready-to-eat Po-Boy sandwiches.
9. Antone's Import Company is authorized to license or franchise the establishment of businesses to utilize the Trademarks and to sell Po-Boy sandwiches in any manner within the area within a two and one-half (2-1/2) mile radius of each of the following addresses: 807 Taft Street, Houston, Texas; 8111 Main Street, Houston, Texas; and 1639 South Voss Road, Houston, Texas.
10. Antone's Import Company shall recover no damages with respect to its claims that J. J. Gregory Gourmet Services, Inc. has wrongfully sold Po-Boy sandwiches in any manner within the areas within a two and one-half (2-1/2) mile radius of each of the following addresses: 807 Taft Street, Houston, Texas; 8111 Main Street, Houston, Texas; and, 1639 South Voss Road, Houston, Texas.
11. Both parties shall take nothing from the opposite party on their respective claims for recovery of attorney fees and expenses of litigation.
12. Costs of the arbitration are to be borne equally by the parties.

Award
Case #B 70 181 0121 92
Page 5

DATE: _____ SIGNED: Jeffry S. Abrams, Arbitrator

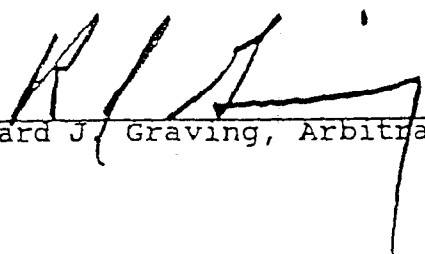
Date:

State of

}SS:

County of

On this _____ day of _____, 19____, before me personally came and appeared _____, to me known and to me known to be the individual(s) described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

DATE: Dec. 24, 1993 SIGNED: 
Richard J. Graving, Arbitrator

Date:

State of

}SS:

County of

On this _____ day of _____, 19____, before me personally came and appeared _____, to me known and to me known to be the individual(s) described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

3 P-
MFA 6

10-15-2002
U.S. Patent & TMO/c/TM Mail Rcp1 Dt. #74

No. 92-053843

ANTONE'S IMPORT COMPANY	§	IN THE DISTRICT COURT OF
	§	
VS.	§	HARRIS COUNTY, T E X A S
	§	
J. J. GREGORY GOURMET	§	
SERVICES, INC.	§	334TH JUDICIAL DISTRICT

FINAL JUDGMENT

On the 3rd day of February, 1994, Antone's Import Company, Inc., Plaintiff in the above-entitled and numbered cause, filed a Motion to Confirm Arbitration Award and For Entry of Judgment pursuant to an Award of Arbitrators on December 22, 1993, pursuant to an Agreement of Arbitration between J. J. Gregory Gourmet Services, Inc., Plaintiff, and Antone's Import Co., Defendant, and for judgment to be entered thereon.

On the 4th day of March, 1994, came on to be heard the above-entitled and numbered cause; and the parties appeared by and through their attorneys of record and announced ready for trial. The Court, after hearing the evidence and arguments of counsel, is of the opinion that Plaintiff is entitled to the entry of a judgment confirming the Award of Arbitrators. It is, therefore,

ORDERED, ADJUDGED and DECREED by the Court that:

1. The trademarks "Antone's", "Antone's Import Company", "Antone's Foreign Foods", and all related logos designs and artwork associated therewith are owned by Antone's Import Company.

2. J. J. Gregory Gourmet Services, Inc. holds a valid, binding and enforceable license to utilize the trademarks "Antone's", "Antone's Import Company", "Antone's Foreign Foods" and

RECORDER'S MEMORANDUM:
This instrument is of poor quality
and not satisfactory for photographic
recording; and/or alterations were
present at the time of filming.

V7970 P0449

all variations thereof, together with all logos, designs and artwork associated therewith (hereinafter collectively referred to as "the trademarks"), with the following restrictions:

A. J. J. Gregory Gourmet Services, Inc. is not authorized under its license to operate, sub-license or franchise any business establishment or operation which uses or publicly displays the Trademarks, or sells products bearing the Trademarks, within a two and one-half (2-1/2) mile radius of each of the following addresses: 807 Taft Street, Houston, Texas; 8110 Kirby Drive, Houston, Texas (formerly located at 8111 Main Street, Houston, Texas); and, 1440 South Voss Road, Houston, Texas (formerly located at 1639 South Voss Road, Houston, Texas).

B. J. J. Gregory Gourmet Services, Inc. is not authorized under its license to authorize the sale of any product, including Po-Boy sandwiches, by any third party acting for itself or as agent for J. J. Gregory Gourmet Services, Inc. within a two and one-half (2-1/2) mile radius of each of the following addresses: 807 Taft Street, Houston, Texas; 8110 Kirby Drive, Houston, Texas (formerly located at 8111 Main Street, Houston, Texas); and, 1440 South Voss Road, Houston, Texas (formerly located at 1639 South Voss Road, Houston, Texas).

C. J. J. Gregory Gourmet Services, Inc. is not authorized under its license to sell, or to authorize any third-party acting on its own behalf or as agent for J. J. Gregory Gourmet Services, Inc. to sell products, including Po-Boy sandwiches, to any third-party who J. J. Gregory Gourmet Services,

Inc. believes or has reason to believe sells or intends to sell such products, including Po-Boy sandwiches, within a two and one-half (2-1/2) mile radius of each of the following addresses; 807 Taft Street, Houston, Texas; 8110 Kirby Drive, Houston, Texas (formerly located at 8111 Main Street, Houston, Texas); and, 1440 South Voss Road, Houston, Texas (formerly located at 1639 South Voss Road, Houston, Texas).

D. J. J. Gregory Gourmet Services, Inc. is not authorized under its license to sell bulk food items to restaurants, grocery stores or other business or commercial purchasers within the city limits of Houston, Texas. The term "bulk food items" as used herein does not include prepared, ready-to-eat Po-Boy sandwiches.

3. J. J. Gregory Gourmet Services, Inc. is hereby Ordered to immediately cease and desist and is hereby permanently enjoined from selling, and from permitting the sale by others (whether under license, re-sale, consignment or other arrangement), of any products bearing the Trademarks at any location within a two and one-half (2-1/2) mile radius of each of the following addresses: 807 Taft Street, Houston, Texas; 8110 Kirby Drive, Houston, Texas (formerly located at 8111 Main Street, Houston, Texas); and, 1440 South Voss Road, Houston, Texas (formerly located at 1639 South Voss Road, Houston, Texas); provided, however, that such injunction shall not apply with respect to the continued operation of retail establishments by J. J. Gregory Gourmet Services, Inc., at 810

V7970 P0451

Capitol, Houston, Texas, 5350 Westheimer, Houston, Texas, and in Galleria II, Houston, Texas.

4. J. J. Gregory Gourmet Services, Inc. is ordered to refrain from advertising special sales, pricing or promotions in any manner which does not prominently specify that such offers do not apply at all "Antone's" locations.

5. Antone's Import Company shall take nothing by reason of its claims against J. J. Gregory Gourmet Services, Inc. for breach of the Agreement as same relate to quality standards.

6. Antone's Import Company shall take nothing by reason of its claims against J. J. Gregory Gourmet Services, Inc. as same relate to the operation of "Antone's Express" drive through locations.

7. Antone's Import Company is estopped or precluded from bringing its complaints against J. J. Gregory Gourmet Services, Inc. with respect to the operation of retain establishments by J. J. Gregory Gourmet Services, Inc. at 810 Capitol, Houston, Texas, 5350 Westheimer, Houston, Texas and in Galleria II, Houston, Texas, and therefore shall take nothing by reason of these claims.

8. Antone's Import Company has the exclusive right to distribute bulk food items to restaurants, grocery stores or other business or commercial purchasers bearing the Trademarks within the city limits of Houston, Texas. As used herein, the term "bulk food items" does not include prepared, ready-to-eat Po-Boy sandwiches.

9. Antone's Import Company is authorized to license or franchise the establishment of businesses to utilize the Trademarks

and to sell Po-Boy sandwiches in any manner within the area within a two and one-half (2-1/2) mile radius of each of the following addresses: 807 Taft Street, Houston, Texas; 8110 Kirby Drive, Houston, Texas (formerly located at 8111 Main Street, Houston, Texas); and, 1440 South Voss Road, Houston, Texas (formerly located at 1639 South Voss Road, Houston, Texas).

10. Antone's Import Company shall recover no damages with respect to its claims that J. J. Gregory Gourmet Services, Inc. has wrongfully sold Po-Boy sandwiches in any manner within the areas within a two and one-half (2-1/2) mile radius of each of the following addresses: 807 Taft Street, Houston, Texas; 8111 Main Street, Houston, Texas); and, 1440 South Voss Road, Houston, Texas (formerly located at 1639 South Voss Road, Houston, Texas).

11. Both parties shall take nothing from the opposite party on their respective claims for recovery of attorney fees and expenses of litigation.

12. Costs of the arbitration are to be borne equally by the parties. Accordingly, the compensation of the arbitrators totaling NINETEEN THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$19,500.00) and the administrative fees and expenses of the American Arbitration Association totaling FIVE THOUSAND AND FIFTY DOLLARS AND SIXTY-SIX CENTS (\$5,550.66) shall be borne equally by the parties. Therefore, Claimant shall pay to Respondent the sum of TWO THOUSAND NINE HUNDRED FORTY-NINE DOLLARS AND SIXTY-SEVEN CENTS (\$2,949.67) for that portion of its share of fees and expenses previously advanced by Respondent to the Association, and claimant

V7970 P0453

shall pay to the American Arbitration Association the sum of EIGHT THOUSAND TWO HUNDRED SEVENTY-FIVE DOLLARS AND SIXTY-SIX CENTS (\$8,275.66) for that portion of its share of administrative fees and expenses still due to the Arbitration.

It is further ORDERED that the above sums shall be paid within thirty (30) days of December 22, 1993.

It is further ORDERED that this judgment is in full settlement of all claims and counterclaims submitted to arbitration.

SIGNED this 15th day of March, 1994.

MAR 19 1994

[Signature]
JUDGE PRESIDING

RECORDER'S MEMORANDUM:
This instrument is of poor quality
and not satisfactory for photographic
recording; and/or alterations were
present at the time of filming.

V7970 P0454

4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PO-BOYZ, LTD.,

Concurrent Use Applicant,

v.

ANTONE'S IMPORT COMPANY,

Registrant.

10-15-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #74

Concurrent Use No. 1,236

***REGISTRANT'S FIRST REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS***

Pursuant to Fed. R. Civ. P. 34, and 37 C.F.R. § 2.120(d), Registrant, Antone's Import Company, requests that Concurrent Use Applicant within thirty (30) days after service of these requests, produce for inspection and copying the documents and tangible things identified below:

INTRODUCTION AND DEFINITIONS

A. The Introduction and Definitions forming a part of Registrant's First Set of Interrogatories are incorporated herein by reference.

B. If any Request below is denied or objected to, in whole or in part, Concurrent Use Applicant shall state in detail the reasons for the denial or objection.

C. These instructions are continuing and to the extent that the responses may be enlarged or supplemented by information acquired by Concurrent Use Applicant subsequent to the service of answers hereto, Concurrent Use Applicant is requested promptly thereafter to serve supplemental answers reflecting such changes, where required by the Federal Rules of Civil Procedure.

D. Concurrent Use Applicant shall designate in its responses with respect to each document requested, whether any documents responsive to the request exist; whether such documents will be produced by Applicant, when and where the documents will be produced, and where such documents usually are kept in the regular course of business.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

1 The documents referenced or identified by Applicant in response to Opposer's First Set of Interrogatories, served on Applicant concurrently herewith.

2. All documents which evidence, refer, relate or support Concurrent Use Applicant's contention that "AIC has consented to the registration of the [various] marks[s] by" Concurrent Use Applicant, as stated in Concurrent Use Applicant's September 9, 1998 Response, page 6.

3. All documents which evidence, refer, relate or support Concurrent Use Applicant's contention that the "Election of Antone's Import Company, Inc." (attached as Exhibit G to Concurrent Use Applicant's September 9, 1998 Response) resolved the issue of ownership of AIC's Marks.

4. All documents which evidence, refer or relate to any settlement agreement between AIC and Po-Boyz, Inc. (or a predecessor-in-interest to Po-Boyz, Inc.).

5. All documents which evidence, support, refer, or relate to any license, assignment, agreement, understanding, or other grant or transfer of rights referring or relating to Registrant's Marks and/or Concurrent Use Applicant's Marks.

6. All documents which evidence, refer, relate or support Concurrent Use Applicant's position that the Bankruptcy Court Order treated the 1978 Agreement (attached as Exhibit A to Concurrent Use Applicant's September 9, 1998 Response) as an assignment of AIC's marks.

7. All documents which evidence, refer, relate or support Concurrent Use Applicant's contention that the 1978 Agreement (attached as Exhibit A to Concurrent Use Applicant's September 9, 1998 Response) constituted an assignment of AIC's marks to J.J. Gregory.

October 15, 2002

ANTONE'S IMPORT COMPANY

By: _____

Harvey B. Jacobson
Matthew J. Cuccias
JACOBSON HOLMAN, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004
(202) 638-6666

Attorneys for Registrant

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing Registrant's First Set of Request for Production of Documents and Things to be served by first-class mail, postage prepaid, upon counsel for Concurrent Use Applicant:

Stephen L. Sapp
Locke Liddel & Sapp LLP
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776

this ____ day of October, 2002.

5

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PO-BOYZ, LTD.,

Concurrent Use Applicant,

v.

ANTONE'S IMPORT COMPANY,

Registrant.

10-15-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #74

Concurrent Use No. 1,236

REGISTRANT'S FIRST SET OF INTERROGATORIES

Pursuant to Fed. R. Civ. P. 33, and Rule 2.120 of the Trademark Rules of Practice, Registrant, requests that Concurrent Use Applicant answer, in writing and under oath, the interrogatories propounded below. Such responses must be made within thirty (30) days of service of these interrogatories, in accordance with the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

INTRODUCTION AND DEFINITIONS

A. As used herein, the term "person(s)" includes not only natural persons, officers, managing agents, supervisory personnel, and employees, but also includes, without limitation, firms, partnerships, associations, corporations and other legal entities, divisions, departments or other units thereof.

B. "Registrant" and/or "AIC" shall mean the nominal Registrant, Antone's Import Company, and any predecessor(s) in interest, subsidiaries, divisions, and related companies, and directors, officers and employees thereof.

§

C. "Concurrent Use Applicant" shall mean the nominal Concurrent Use Applicant, Po-Boyz, Ltd., and any predecessor(s) or successor(s) in interest, and any partnership and/or corporation in which Concurrent Use Applicant has an ownership interest and/or Concurrent Use Applicant controls and which uses Concurrent Use Applicant's mark in any way, as well as all divisions, licensees, parent, subsidiary, affiliated or related companies thereof, and the partners, principals, directors, officers, agents and employees thereof. When an answer is supplied with respect to any predecessor or successor in interest, division, licensee, parent, subsidiary, affiliated or related company, this fact should be stated and such predecessor in interest, division, licensee, parent, subsidiary, affiliated or related company should be fully identified by name and principal place of business.

D. As used herein, the terms "Registrant's mark(s)" and/or "AIC's Marks shall refer collectively to **ANTONE'S IMPORT COMPANY, ANTONE'S ORIGINAL, ANTONE'S** and/or **ANTONE'S FOREIGN FOODS** in any and all formats, used alone or in combination with any other word(s) or design(s), or symbol(s), and/or any other term or designation comprised in whole or in part of "**ANTONE'S**" as used by Registrant.

E. As used herein, the term "Concurrent Use Applicant's marks" refers to the marks listed in the Order to Show Cause and/or any other mark, name, or designation containing the term(s) "**ANTONE'S**" any and all forms and formats, used alone or in combination with any other word(s), design(s) or symbol(s), by Concurrent Use Applicant.

F. As used herein, the phrase "Concurrent Use Applicant's September 9, 1998 Response" shall refer to the Response filed by Concurrent Use Applicant in response to the Trademark Examiner's refusal to register in Application Serial No. 75/338,455.

G. As used herein, the term "Bankruptcy Court Order" shall mean the Order (attached as Exhibit C to the Concurrent Use Applicant's September 9, 1998 Response) issued by the United States Bankruptcy Court for the Southern District of Texas, entitled "Order Substantively Consolidating Bankruptcy Cases; Approving Assumption and Assignment of Executory Contracts; Approving the Sale of Assets Free and Clear of Liens and Encumbrances; Approving Resolution of Claims With Mary Jo Antone Hatfield; and Confirming Amended Joint Plan of Reorganization of J.J. Gregory Gourmet Services, Inc. and M.J. Antone, Inc., As Modified;" and dated December 4, 1996.

H. As used herein, the term "1978 Agreement" shall mean the agreement dated August 28, 1978 between AIC and J.J. Gregory Gourmet Services, Inc., which is attached as Exhibit A to Concurrent Use Applicant's September 9, 1998 Response.

I. As used herein, the term "document" is used in its broadest sense, to include, without limitation, the following items, whether printed, or recorded, or filmed, or reproduced by any process, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and whether an original, master or copy; including but not limited to, communications, including intra-company communications and correspondence; cablegrams, radio-grams and telegrams; notes and memoranda; summaries, minutes and records of telephone conversations, meetings and conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations or interviews; reports; customer lists; books, manuals, publications and diaries; laboratory engineering reports; reports of test results; notebooks; charts; plans; sketches and drawings; photographs; reports and/or summaries of investigations and/or surveys; customer surveys; opinions and reports of consultants; opinions of

counsel; reports and summaries of negotiations; brochures; instruction manuals; user manuals; computer software; operation manuals; pamphlets, catalogs and catalog sheets; advertisements, including storyboard and/or scripts for television commercials; circulars; trade letters; press publicity and trade and product releases; product descriptions; drafts of original or preliminary notes on, and marginal comments appearing on, any document; applications for approval by a governmental agency; other reports and records; and any other information-containing paper, writing or physical thing.

J. As used herein, "communication" is used in its broadest sense, to include, without limitation, the following:

- (1) any document, as defined in paragraph I, above; and
- (2) any conversation, discussion, dialogue, conference, report, message, account, interview, exchange, and/or consultation, whether oral or written.

K "Identify" or "identification" with respect to a person, means provide the person's:

1. name;
2. last known residential address;
3. last known business address;
4. last known employer or business affiliation; and
5. occupation and business position held.

L. "Identify" or "identification" with respect to a company, partnership, firm, corporation or other non-juristic person, shall mean provide:

1. the name;
2. if incorporated, the place of incorporation;

3. if unincorporated, the name of the partners and/or principals; and
4. the address of such entity's principal place of business.

M "Identify" or "identification" with respect to a document, shall mean provide:

1. the identity of the person or persons who prepared it, the sender, and all recipient(s), if any;

2. the title of the document;
3. a description of the general nature of its subject matter(s);
4. the date of preparation;
5. the date and manner of distribution and publication, if any;
6. the location of each copy, and the identity of the present custodian; and
7. the identity of the person or persons who can identify and/or authenticate it.

N "Identify" or "identification" with respect to an act, occurrence, circumstance, or event (collectively "act"), shall mean providing:

1. a description of the act;
2. the date(s) the act occurred;
3. where the act occurred;
4. the identity of the person or persons performing said act (or, in the case of an omission, the identity of the person or persons failing to act);
5. the identity of all persons who have any knowledge or information, about or regarding the act, including the identity of each witness to the act;
6. when the act, or omission, first became known to Applicant; and

7. the circumstances and manner in which knowledge of the act was first obtained by Applicant.

O. "Identify" or "identification" with respect to goods, products, or services shall mean:

1. state the common descriptive name of said good, product or service;
2. state the model number, identify the manufacturer and location of manufacture thereof;
3. provide a detailed description of the purpose, function, and/or application of said good, product or service; and
4. describe in detail the channels of trade in which such product or service is sold and/or rendered.

P "Identify" or "identification" with respect to a search, survey, poll, or other investigation (collectively "search") shall mean:

1. state the date and location of the search;
2. identify and describe all documents examined or investigated in connection with the search;
3. if applicable, state the size of the sample surveyed, how that sample was selected, and the questions asked;
4. identify each person(s) who conducted the search;
5. state all results and conclusions of the search, including, if applicable, each answer to each question posed;
6. with respect to a search or similar investigation, identify each reference disclosed by providing the mark or name which is the subject of such reference, the owner of the

mark or name, the registrant or applicant, the registration or serial number, and the goods and services listed in, or in connection with, such reference;

7. identify each person who rendered any conclusions or opinion relating to such search;

8. identify each person to whom the results, in whole or in part, of such search and/or any conclusion or opinion relating to such search, were communicated, and the date(s) of such communication;

9. identify each person who has knowledge or information with respect to the search; and

10. identify all documents which contain any results of, and/or refer or relate in any way to, such search.

Q. "Advertising" and/or "promotional materials" shall mean, without limitation, advertisements, including advertising copy, advertising slicks, and line art; product packaging, labels, brochures, photographs, product sheets, point of sale displays, audio or video tapes; catalogues or other product guide books; signage, price lists, warranty information, and/or any other document or material used and/or distributed to promote and/or solicit business, shipments, sales, and/or orders of products or services of Applicant.

R "Identify" or "identification" with respect to "channels of trade" with respect to a product or service shall mean, without limitation:

(1) describe the circumstances surrounding the sale, distribution and/or rendition of such product/service; and

(2) state whether sales are through any one, or more, of the following means:

- (a) retail,
- (b) wholesale,
- (c) direct mail,
- (d) mail order,
- (e) catalogue,
- (f) subscription,
- (g) visits by salespersons,
- (h) direct contact with customers,
- (i) provision of sample goods or services,
- (j) trade shows,
- (k) other means, and if so, describe the nature of the sale,
- (l) any combination of the above sub-sections (a) through (k) inclusive,

of this definition, and if so, identify the applicable channels.

S As used herein, "media" or "medium" shall be construed to comprise newspapers, consumer magazines, trade publications, trade shows, catalogues, electronic communications, the Internet, and any means of audio or video transmission, and "identify" or "identification" with respect to "media" or "medium" shall mean, without limitation:

1. provide, for each print medium: the name of the publication or print media; the date; volume number; geographical area and size of circulation; and if directed to a particular trade, industry, or type of reader/customer, describe such trade/ industry/reader;

2. provide, for each audio and video transmission (including radio and television): the station and/or network on which such transmission was broadcast; the geographical area of broadcast; and the date of each broadcast;

3. provide, for each direct mailing or other direct distribution: the geographic area and dates of such distribution; the number of such mailings/direct distributions sent or disseminated; a general description of the persons to whom distributed; and if a mailing list was used, the source and identification of each such mailing list;

4. identify, for each medium referring or relating in any way to Applicant's products or services, the specifically referenced product(s) or service(s) and mark(s) therefor; and

5. identify the persons employed or associated with Applicant who have most knowledge of same.

T. "Identify" or "identification" with respect to any advertisement or promotional materials shall mean:

1. identify the medium in which such advertisement/promotional material was published, broadcast or otherwise disseminated;

2. identify each person who created, ordered, distributed and/or placed such advertisement;

3. state where, when, and to whom said advertisement or promotional material, and/or copies of same, were distributed, and the number of copies distributed at each such place and time; and

4. identify documents which would show when and where the advertisement was placed/broadcast/distributed and the costs thereof, including an identification of the advertisement itself.

U “Identify” or “identification” with respect to “price” or “cost”, shall mean, without limitation, the retail (or suggested retail), and wholesale, price or cost to the purchaser of the subject product and/or service.

V “Identify” or “identification” with respect to a retail outlet or store shall mean:

1. the retail outlet or store name;
2. the address of the retail outlet or store;
3. the owner(s) of the retail outlet or store;
4. the date on which the retail outlet or store was first opened to the public; and
5. to identify the products, services, and business offered or rendered by or from such retail outlet or store.

W. “Identify” or “identification” with respect to an agreement, an assignment, license, understanding, or other contract or grant or transfer of rights, (collectively “agreement”) shall mean:

- 1 identify the type of agreement, *e.g.* “assignment”, “license”, “consent to use”, “distributorship agreement”, etc.;
- 2 state the date and term of duration of the agreement, and whether such still is in effect;
- 3 identify the geographic scope of the agreement;
- 4 identify the parties to the agreement;
- 5 state whether the agreement is oral or in writing;

6 describe in detail any rights and/or property transferred by the agreement, including whether the goodwill in any business, in whole or in part, was transferred as part of, or in connection with, the agreement and, if so, describe in detail the nature and extent of any goodwill assigned, licensed, granted, or transferred;

7 if the agreement is a trademark or service mark license, identify the manner of control which is, or was, to be exercised with respect to the quality and character of the goods or services, on or in connection with which any affected mark was to be, or has been, used under such agreement;

8 state whether the assignor, licensor, grantor, transferor still was doing business at the time of the assignment, license, understanding, grant, transfer;

9 state whether the assignment/grant/transfer was one in bankruptcy;

10 state whether the agreement was recorded in the Patent and Trademark Office or any other public record and, if so, state the date and place of such recordation(s);

11 state in detail the conditions and terms of such agreement;

12 identify all documents which evidence or refer or relate in any way to such agreement, including the agreement itself, if in writing;

13 identify each person who drafted and/or participated in any way in the negotiations and/or drafting of the agreement, and/or who approved the same; and

14 identify each person involved in or who has participated in the enforcement and/or execution of the agreement.

X “Identify” or “identification” with respect to any objection or complaint regarding the use of a name or mark, lawsuit, opposition, cancellation, or other *inter partes* proceeding, shall mean identify:

1 the person making the objection or complaint and/or on whose behalf the objection or complaint was made and/or who brought such lawsuit, opposition, cancellation or other *inter partes* proceeding;

2 the date when such objections, complaint, lawsuit, opposition, cancellation or other proceeding was made and/or instituted;

3 with respect to any lawsuit or proceeding, the parties thereto;

4 the civil action or docket number and/or other identifying indicator used by the tribunal before whom such was brought;

5 the court or other tribunal before whom the proceeding was brought;

6 the trademark(s) and/or service mark(s) at issue; and

7 the disposition and/or resolution of such objection, complaint or proceeding;

Y “Identify” or “identification” with respect to “expert witness”, shall mean, without limitation:

1 identify such person;

2 describe the qualifications for such expert;

3 identify all articles, books or other publications authored in whole or in part by such expert;

4 identify all documents which such expert has reviewed and/or upon which such expert may rely in connection with his or her testimony; and

5 provide all of the information set forth in Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure.

Z “Identify” or “identification” with respect to a trademark or service mark registration or application shall mean:

1 the identification of the agency or office and when filed, and/or who issued such registration;

2 the names of the applicant and registrant;

3 the serial and registration number;

4 the filing and issue date(s);

5 the present status thereof;

6 if registration was refused, the reason(s) for such refusal;

7 identify all documents referring to such registration/application filed in connection with such registration or application including the registration/application itself.

8 identify whether any assignment or other documents have been received, and if so, what and when in connection with such registration application.

Z. “Identify” or “identification” with respect to an instance of confusion or mistake and/or an instance where a person thought, arrived or otherwise indicated a belief there may be an association between the parties herein and/or other products or businesses means state:

(1) the identity of the person(s) confused or mistaken;

(2) the details of such event, including the “mistake” made and the substance of the “confusion”;

(3) the date and place of such event and/or instance of mistake or confusion;

(4) a description of the details of the manner in which such confusion, mistake, belief, assumption or indication was communicated or came to the attention of Applicant;

(5) the details of the response or communication, if any, made by or on behalf of Applicant, directly or indirectly, to the person so confused or mistaken or who communicated such confusion or mistake to Applicant;

(6) the identity of each person having knowledge of such confusion or mistake; and

(7) the identity of all documents and communications which refer or relate in any way to such confusion or mistake.

AA. As used herein, “and” or “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

BB. As used herein, “referring or relating to” means comprising, relating to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

CC. If Applicant is aware that a document or a group of documents once existed, but has been destroyed, in addition to the identification of the document as described herein, Applicant also is requested to state when the document or group of documents was destroyed, who destroyed it, why it was destroyed, and the circumstances under which it was destroyed.

DD. With respect to each document withheld on the ground of a claim of attorney-client privilege or the work product doctrine, identify such document in accordance with these definitions and instructions, and state in detail the basis and nature of such claim of privilege.

EE. These interrogatories shall be deemed to be continuing, requiring Applicant to serve upon Registrant amended or supplemental answers promptly after Applicant has acquired additional knowledge or information relating in any way to such interrogatories.

FF. With respect to any interrogatory which is asserted to be overbroad, or unduly burdensome, state all information requested which can be provided without undue burden, and/or which is relevant or might lead to the discovery of admissible evidence.

GG. Unless otherwise indicated, all discovery requests should be interpreted as referring to activities within the United States and/or interstate commerce and/or commerce which is regulatable by the Congress.

INTERROGATORIES

1. State in detail each fact and all information (including, but not limited to, each witness with personal knowledge of same) which evidences or supports Concurrent Use Applicant's contention that "AIC has consented to the registration of the [various] marks[s] by" Concurrent Use Applicant, as stated in Concurrent Use Applicant's September 9, 1998 Response, page 6.

2. State in detail each fact and all information (including, but not limited to, each witness with personal knowledge of same) which evidences or supports Concurrent Use Applicant's contention that the "Election of Antone's Import Company, Inc." (attached as Exhibit G to Concurrent Use Applicant's September 9, 1998 Response) resolved the issue of ownership of AIC's Marks.

4. State in detail each fact and all information (including, but not limited to, each witness with personal knowledge of same) regarding any settlement agreement between AIC and Po-Boyz, Inc. (or a predecessor-in-interest to Po-Boyz, Inc.).

5. Identify all documents which evidence, support, refer, or relate to any license, assignment, agreement, understanding, or other grant or transfer of rights in or to Registrant's Marks and/or Concurrent Use Applicant's Marks.

6. State in detail each fact and all information (including, but not limited to, each witness with personal knowledge of same) which evidences or supports Concurrent Use Applicant's contention that the Bankruptcy Court Order treated the 1978 Agreement (attached as Exhibit A to Concurrent Use Applicant's September 9, 1998 Response) as an assignment of AIC's Marks.

7. State in detail each fact and all information (including, but not limited to, each witness with personal knowledge of same) which evidences or supports Concurrent Use Applicant's contention that the 1978 Agreement (attached as Exhibit A to Concurrent Use Applicant's September 9, 1998 Response) constituted an assignment of AIC's Marks to J.J. Gregory.

October 15, 2002

ANTONE'S IMPORT COMPANY

By: _____
Harvey B. Jacobson
Matthew J. Cuccias
JACOBSON HOLMAN, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004
(202) 638-6666

Attorneys for Registrant

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing Registrant's First Set of Interrogatories to be served by first-class mail, postage prepaid, upon counsel for Concurrent Use Applicant:

Stephen L. Sapp
Locke Liddel & Sapp LLP
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776

this ____ day of October, 2002.
